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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/978,510	10/16/2001	Alan Mark Schilowitz	JJA-0107	4852

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EXAMINER	
GRIFFIN, WALTER DEAN	

ART UNIT	PAPER NUMBER
1764	

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Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/978,510
Filing Date: October 16, 2001
Appellant(s): SCHILOWITZ ET AL.

Joseph J. Allocca
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on June 14, 2004.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 1, 3, 7, 9, 11, and 12 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

Claims 1, 3, 7, 9, 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barry et al. (5,976,201).

The Barry reference discloses a diesel fuel having a specific gravity typically in the range of 0.82 to 0.83, a viscosity typically in the range from 1.7 to 1.9 cSt at 40°C, and a sulfur content of not greater than 0.1 wt%. One specific example of the fuel has a sulfur content of 0.01%. See column 2, lines 3-10 and 60-67 and col. 4, lines 11-42.

The Barry reference does not disclose the use of the fuel in a common rail fuel system compression ignition engine.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the teachings of the Barry reference by utilizing the fuel of Barry in a common rail fuel system compression ignition engine because one would utilize a known diesel fuel in any diesel engine regardless of its specific features and expect the engine to work effectively.

(11) Response to Argument

Appellant's arguments are based on the assertion that the power loss in a high-pressure common rail engine when using the diesel fuel having the characteristics in the claims is unexpectedly small. The basis for this assertion is that available data would suggest that the power loss would be expected to be much greater. However, high-pressure common rail engines are fundamentally different from conventional engines upon which available data are based.

High-pressure common rail engines have higher fuel efficiency, better engine performance, and better vehicle response and acceleration as compared to conventional engines. Therefore, the examiner asserts that, because of the fundamental differences between conventional and high-pressure common rail engines, one would not be able to conclude that high-pressure common rail engines would be expected to behave similarly to conventional engines in regard to density differences in fuels.

Additionally, the examiner asserts that one having ordinary skill in the art would use the claimed fuels in any diesel engine in order to obtain emission reduction. This would clearly provide motivation to use such fuels in the high-pressure common rail engines.

Finally, there is no dispute that the diesel fuel in the claims was known in the prior art. Therefore, the prior art has recognized the suitability of the fuel for use in a compression ignition engine (i.e., diesel engine). Additionally, there is no dispute that common rail fuel system compression ignition engines were known in the prior art. Therefore, the examiner asserts that using this known fuel for its intended use (i.e., in any diesel engine including those claimed) is within the level of ordinary skill in the art.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,
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Primary Examiner
Art Unit 1764

WG
August 3, 2004

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